STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AMEREN TRANSMISSION COMPANY OF ILLINOIS	)	
	)	
Petition for a Certificate of Public Convenience and Necessity, pursuant to Section 8-406.1 of the Illinois Public Utilities Act, and an Order pursuant to Section 8-503 of the Public Utilities Act, to Construct, Operate and Maintain a New High Voltage Electric Service Line and Related Facilities in the Counties of Adams, Brown, Cass, Champaign, Christian, Clark, Coles, Edgar, Fulton, Macon, Montgomery, Morgan, Moultrie, Pike, Sangamon, Schuyler, Scott and Shelby, Illinois.	)	Docket No. 12-0598

AMEREN TRANSMISSION COMPANY OF ILLINOIS' REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE AMENDED LANDOWNER LIST

Ameren Transmission Company of Illinois (ATXI) respectfully submits this Reply in support of ATXI's Motion for Leave to File Amended Landowner List and Order Directing the Clerk to Issue Notice to Certain Affected Landowners (Motion). While this Reply is directed primarily at Staff's January 11, 2013 Response, it also encompasses the Responses of Colfax-Scott Land Preservation Group and Morgan, Sangamon, and Scott Counties Land Preservation Group (filed January 9, 2013), Macon County Property Owners (filed January 11, 2013), and Stop the Power Lines Coalition (filed January 11, 2013) (Responding Intervenors).

I. INTRODUCTION

The issue before the ALJs is how to remedy ATXI's inadvertent failure to provide the Clerk of the Commission with the names and addresses of approximately 130 property owners along the Alternate Route of the Pana – Mt. Zion portion of the Transmission Line. After reviewing the responses to its Motion, it would appear ATXI is the only party to propose a rational solution: allow the Company to file an amended landowner list and direct the Clerk to notify affected landowners of this proceeding (as in fact has already happened). A "carve out" in the procedural schedule could also be ordered for these landowners; to the extent the ALJs

believe one is necessary. ATXI has suggested the same in its Motion. By contrast, Staff's recommendation to dismiss the Pana – Mt. Zion portion of the Project is the *worst* possible remedy – and also lacks any legal support. Responding Intervenors' proposals to waive or ignore the 225-day statutory deadline for issuance of a final order is not a viable remedy either, for the simple reason that this would be unlawful, as Staff also seemingly recognizes.

As explained below, all statutory notice requirements have been met. The due process rights of property owners along the Pana – Mt. Zion segment of the Project have not been violated in any respect. The Commission should grant ATXI's motion so that all parties can move on.

II. ARGUMENT

Where a claim is made that due process has been violated, the Commission and courts must decide what process was due. Two factors are controlling: "(1) the risk of an erroneous deprivation of the property interest caused by the procedures used and the probable value, if any, of additional or substitute procedural safeguards; and (2) the fiscal and administrative burdens placed on the Commission due to any necessary additional or substitute procedural requirements." *Quantum Pipeline Co. v. Illinois Comm. Comm'n*, 304 Ill. App.3d 310, 317 (3d Dist. 1999) (citations omitted). As discussed below, the fact that ATXI complied with all statutory notice requirements is sufficient to fully mitigate any concerns of an "erroneous deprivation of the property interest" of landowners near the Pana – Mt. Zion portion. The "fiscal and administrative burdens" of requiring strict compliance with Section 200.150(h) of the Commission's Rule of Practice are evident by the rule itself: "The foregoing provisions for notice to owners of record shall not be deemed jurisdictional and the omission of the name and address of an owner of record from the list or lack of notice shall in no way invalidate a

subsequent order of the Commission relating to the application." 83 Ill. Admin. Code § 200.150(h).

A. ATXI Provided All Required Statutory Notices.

Staff claims that the Pana – Mt. Zion landowners "were not provided proper statutory notice." (Staff Resp. at 4.) Certain of the Responding Interveners echo this claim. Remarkably, nowhere in its response does Staff (or anyone else) cite or quote the notice provisions of Section 8-406.1, explain what those provisions require, or otherwise demonstrate that ATXI failed to do something the statute required it to do.

Section 8-406.1(f) allows the Commission to grant a certificate "after notice and hearing." 220 ILCS 5/8-406.1(f). Notice to whom? The statute tells us. Section 8-406.1(a) lists the information a utility "shall include" with a petition for expedited approval. With respect to notices, Section 8-406.1(a)(3) requires the submission of "information" (no particular form of the "information" is specified) showing:

- "[T]hat the utility had held a minimum of 3 pre-filing public meetings[1] to receive public comment concerning the Project in each county where the Project is to be located . . .;"
- that notice of these public meetings "shall be published in a newspaper of general circulation within the affected county once a week for 3 consecutive weeks . . .;" and that
- "[n]otice of the public meeting, including a description of the Project, must be provided in writing to the clerk of each county where the Project is to be located."

220 ILCS 5/8-406.1(a)(3)(emphasis added).

An applicant under Section 8-406.1 must also publish a notice after an application is filed. Under 8-406.1(d), "The public utility shall publish notice of its application in the official State newspaper within 10 days following the date of the application's filing." 220 ILCS 5/8-

[1] A dedicated Project website must be established at least three weeks prior to the first public meeting and remain on the web through the duration of the Project. 220 ILCS 5/-8-406.1(e).

406.1(d). (ATXI notes that notice by publication is precisely the manner by which ratepayers may learn of a pending rate case. There's no requirement that each ratepayer be provided individual notice. 220 ILCS 5/9-201.)

It is important to note that the landowners along the Alternate Route of the Pana – Mt. Zion portion are located in Christian, Shelby and Macon counties – the same counties where the landowners along the primary route for this segment are located. (ATXI Ex. 4.2, pp. 163-170.) The landowners along the Alternate Route – as well as all other landowners on all other portions – did in fact receive "proper statutory notice." ATXI established a project website. (ATXI Pet. ¶ 43; Ex. 4.0 (Murphy Dir.), p. 22.) It held the first public meeting more than three weeks later. (ATXI Pet. ¶ 43; Ex. 4.0, pp. 3, 22.) Nearly 100 public meetings were held thereafter. (ATXI Exs. 4.0, pp. 3-4; 4.1.) Notices were published for each public meeting in a newspaper of general circulation within the affected county. (ATXI Exs. 4.0, p. 14; 4.1; 4.8.) The clerk of each county also received written notice. (ATXI Exs. 4.0, p. 14; 4.7.) ATXI also published the required notice after it filed the Petition. (Certificate of Publication, filed December 11, 2012.) In short, ATXI provided all of the notices that Section 8-406.1 requires.

An unstated assumption underlying Staff and Responding Intervenors' responses is that because the affected property owners did not receive notice of the initial hearing from the Clerk of the Commission, there is no way they can know about the Project or otherwise protect their interests. This is demonstrably untrue, because at least seven landowners along the Pana – Mt. Zion Alternate Route attended one or more public meetings concerning the Project. (See Attachment A, Affidavit of Donell Murphy.) Moreover, Section 8-406.1 clearly does not impose upon an applicant or the Commission the responsibility to identify or serve any sort of direct

notice or other communication to individual landowners.[2] The statute establishes a process whereby information about a project is broadly communicated to the public. Interested parties may participate in the proceeding to the extent they deem necessary, from attending public meetings, to intervening in the case and actively pursuing alternate routes, to anything in between. The public process *before* a case is filed – and not the mailing of notices by the Clerk *after* the case is filed – is how the law dictates that potentially affected landowners be notified of siting proceedings.

Neither Staff nor any other party has explained how the filing of a partially-incorrect landowner list undermined the public hearing process. Nor can they. A map of potential route alternatives, and ultimately both the Primary and Alternate Routes for the Pana – Mt. Zion portion, were available at the public meetings and made available on the website beginning in July 2012. (See ATXI Exs. 4.0, pp. 18, 20, 22; 4.1.) Everyone in the county – whether they live near the Primary Route, Alternate Route, or nowhere near either route – received (or at least had access to) the same information. It is disingenuous to argue that landowners potentially affected by the Alternate Route had no way of knowing about this proceeding simply because they did not receive notice of the initial hearing from the Clerk. Indeed, as already mentioned, some of these landowners in fact attended public meetings. (Attachment A, Affidavit of Donell Murphy.)

In short, Staff's unsupported claim that landowners "were not provided proper statutory notice" is wrong as a matter of fact and law.

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[2] As the Commission itself has observed, "the Supreme Court has held, on numerous occasions, that landowners on a path proposed for certification have no right to notice of the proceedings addressing certification, because the granting of a certificate deprives them of neither their property nor of any interest therein. The certificate vests no possessory interest in the certificate holder." *Quantum Pipeline Compan*y, Order, Dockets 96-0001/0318 (cons.)(Dec. 17, 1997) *citing Chi., Burlington and Quincy R.R. v. Cavanaugh 278 Ill.608, 617* (1917).

B. Whether Section 200.150(h) Applies or Not, That Certain Landowners Did Not Receive Notice of the Initial Hearing Is Not Grounds for Dismissal.

Staff argues that "Section 200.150(h) is inapplicable here" because the terms of the rule apply only to petitions filed under Section 8-406, whereas ATXI filed its Petition under Section 8-406.1, which contains "entirely different" filing requirements. (Staff Resp. at 3.) This is a rather curious position. If the rule that required ATXI to provide a landowner list does not apply, problem solved! But then Staff says, "The rule clearly was not intended to allow a petitioner to neglect to notify hundreds of potential landowners," as if to suggest that maybe the rule does apply. (Id.) Staff concludes its discussion by saying (as it did in the first place) that "Section 200.150(h) does not apply in the instant matter." (Id.) To be candid, ATXI is not sure what Staff is trying to say.

Staff's commentary aside, and although a finding by the Commission that Section 200.150(h) does not apply in a Section 8-406.1 proceeding would eliminate the issue in dispute in its entirely, ATXI feels strongly that a ruling on its motion should properly consider the applicable law. To this end, Section 200.150(h) is set out in its entirety below:

> A person filing an application under Section 8-406 of the Public Utilities Act for a Certificate of Public Convenience and Necessity to construct facilities upon or across privately owned tracts of land, or filing under Section 8-503 of that Act [220 ILCS 5/8-503], shall include with the application when filed with the Commission a list containing the name and address of each owner of record of the land as disclosed by the records of the tax collector of the county in which the land is located, as of not more than 30 days prior to the filing of the application. The Commission shall notify the owners of record of the time and place scheduled for the initial hearing upon the application. The foregoing provisions for notice to owners of record shall not be deemed jurisdictional and the omission of the name and address of an owner of record from the list or lack of notice shall in no way invalidate a subsequent order of the Commission relating to the application.

83 Ill. Admin. Code § 200.150(h)(emphasis added).

Each of the underlined sections of the rule are important in understanding what the rule requires and what it does not.

The first clause of the rule states that it applies to applications filed under Section 8-406 or 8-503. ATXI's Petition expressly includes a request for relief under Section 8-503.[3] So the applicability of Section 200.150(h) is not a close question.

The rule requires "a list containing the name and address of each owner of record of the land as disclosed by the records of the tax collector . . . ." 83 Ill. Admin. Code § 200.150(h). The "land" referred to is private property where the proposed facilities will be "upon or across." This raises another important point. As ATXI witness Ms. Murphy discusses, the landowner lists were developed by determining the ownership of parcels within 250' of the routes. (ATXI Ex. 4.0, p. 12.) Thus, ATXI's Petition Exhibit C includes more landowners than it is required to identify under Section 200.150(h).

In voicing their complaints about a lack of notice, Staff and intervenors never address what the landowners are to be notified about. Here again the rule is very clear: "The Commission shall notify the owners of record of the time and place scheduled for the initial hearing upon the application." 83 Ill. Admin. Code § 200.150(h). The Clerk is not required to serve to the Petition to individual landowners. There is no requirement to tell landowners anything of substance about the case. All the rule requires is that landowners be notified of the "initial hearing." No other notice of anything is required, at any point in the case.

The last sentence of Section 200.150(h) deserves mention as well. "The foregoing

[3] Moreover, section 8-406.1(i) states, "a decision granting a certificate under this Section shall include an order pursuant to Section 8-503 of this Act authorizing or directing the construction of the high voltage electric service line and related facilities as approved by the Commission, in the manner and within the time specified in said order." 220 ILCS 5/8-406.1(i). Consequently, any petition filed under Section 8-406.1 must, as a practical matter, include a request for an order under Section 8-503. And because Rule 200.150(h) applies to filings under Section 8-503, the rule applies to Section 8-406.1 proceedings as well.

provisions for notice to owners of record shall not be deemed jurisdictional and the omission of the name and address of an owner of record from the list or lack of notice shall in no way invalidate a subsequent order of the Commission relating to the application." 83 Ill. Admin. Code § 200.150(h). Staff mentions this sentence for the unremarkable proposition that, "The orders of the ALJs are not the same as an 'order of the Commission' that shall not be invalidated. A change in the Case Management Plan would not be an 'invalidation of a Commission order." (Staff Resp. at 4.) No one is questioning the ALJs authority to change the procedural schedule. The point of this section of the rule is this: the Commission may allow this proceeding to continue without the issuance of further notices, and its final order cannot be attacked solely because certain landowners did not receive mailed notice of the initial status conference.

Staff's insistence on strict compliance with Section 200.150(h) elevates form over substance. Commission rules may be waived, suspended or modified "to the extent permitted by law." 83 Ill. Admin. Code § 200.30. In exercising discretion to waive, suspend or modify Section 200.150(h), Section 200.25 instructs the ALJs to consider the following:

- Integrity of the fact-finding process – The principal goal of the hearing process is to assemble a complete factual record to serve as basis for a correct and legally sustainable decision.

- Fairness – Persons appearing in and affected by Commission proceedings must be treated fairly. To this end, parties which do not act diligently and in good faith shall be treated in such a manner as to negate any disadvantage or prejudice experienced by other parties.

- Expedition – Proceedings must be brought to a conclusion as swiftly as is possible in keeping with the other goals of the hearing process.

- Convenience – The hearing process should be tailored where practicable to accommodate the parties, staff witnesses, the Hearing Examiner and the Commission itself.

- Cost-effectiveness – Minimization of costs incurred by the Commission, and by both public and private parties, should be sought.

83 Ill. Admin. Code § 200.25.

As explained below, weighing the circumstances of this proceeding and the standards of discretion for waiving, suspending or modifying Section 200.150(h) tilts the balance of equities in favor of ATXI's proposal and against those of Staff and Responding Intervenors.

C. Staff and Responding Intervenor Proposed Remedies Are Unreasonable and Should Be Rejected.

1. ATXI will not agree to dismiss the Pana-Mt. Zion Portion of the case.

Staff recommends that "ATXI voluntarily withdraw its Petition solely with respect to the Pana-Mt. Zion segment of the project, and re-file that portion in a separate proceeding . . . ." (Staff Resp. at 4.) If ATXI does not voluntarily dismiss, Staff recommends involuntary dismissal. (Id. at 5.)

ATXI will not voluntarily dismiss the Pana – Mt. Zion portion of the case because to do so would inflict far more prejudice to these landowners than any failure to receive notice of the initial hearing may allegedly have caused. Notice to the affected landowners has already been communicated – extensively – throughout the county in which they reside through the public hearing process. Dismissing and refiling even the Pana – Mt. Zion portion would require at least two further rounds of public meetings to comply with Section 8-406.1 before refiling the application. These meetings would require further notice to the public beyond the 130 landowners on the Pana – Mt. Zion Alternate Route. The notices would announce newly scheduled meetings that would duplicate meetings that have already occurred. Landowners also participated in previous meetings and were satisfied that they were not impacted by a Transmission Line Route would be thrown into confusion about whether they would need to participate in the new meetings.

Further, separate, parallel proceedings for the Pana – Mt. Zion portion and the other portions would result in confusion of untold magnitude. Indeed, given the interconnected nature of the Project as a whole (literally and figuratively), having separate proceedings may very well require both sets of parties to intervene in both cases, requiring far greater expenditure of resources than necessary for all involved. The goals of expediency, convenience and cost-effectiveness (see 83 Ill Admin. Code Part 200.25 (c-e)) surely cannot be met by having parallel proceedings.

2. The Commission cannot waive or suspend the statutory deadline for issuance of a final order.

The Responding Intervenors complain about the fact that this proceeding is on an expedited schedule, as authorized and required by Section 8-406.1.[4] To the extent Responding Intervenors argue that the filing of an amended landowner list somehow justifies abandoning the statutory deadline for a Commission order in this case, that argument must be rejected.

The generalized complaints in the Responding Intervenors' responses about the expedited process are untimely and improper. They are untimely because the procedural schedule was established months ago through a process in which these parties participated; they are improper because the Commission does not have the authority to do what is being asked of it; i.e., to "waive" the statutory deadline proscribed in Section 8-406.1. Nothing in Section 8-406.1 authorizes the Commission to waive the deadline for issuance of a final order, either on its own or at the request of other parties.

3. ATXI would not object to a revised schedule.

As ATXI explained it its Motion (pp. 2-3), ATXI would not object to a modified

[4] ATXI is not, as Macon County Property Owners' argue, seeking to "amend" the Petition. The filing of a corrected landowner list does not change the Petition in any substantive way.

schedule. ATXI believes that its proposed "carve out" schedule for the Pana – Mt. Zion Alternate Route landowners is reasonable. But ATXI notes that the current schedule has further flexibility to provide additional time for Pana – Mt. Zion Alternate Route landowners to participate. As the table below shows, the schedule can be revised to give both the Pana – Mt. Zion landowner interveners, if any, until February 4, 2013 to propose alternate routes (consistent with the 17 days from the December 14, 2012 Case Management Order that other intervenors received) and until March 4 to file Direct Testimony. Under the same schedule, Staff and other interveners could have an additional week to prepare their Direct Testimony, all while meeting the statutory deadline.

Activity	**Original Date**	**Revised Date**
ATXI Petition and Section 8-406.1 Requirements Filed	*Nov. 7, 2012*	
Prehearing Conference	*Dec. 3, 2012 (10:30 AM)*	
Staff and Intervenor Alternative Routes Identified	*Dec. 31, 2012*	
Status Hearing	Jan. 17, 2013 (10:30 AM)	
Pana Mt. Zion Alternate Route landowners identify alternate routes and affected landowners		**February 4, 2013**
Staff and Intervenor Direct Testimony	Feb. 11, 2013	**February 18, 2013**
Pana Mt. Zion Alternate Route landowners and other landowners identified on February 4 Direct Testimony		**March 4, 2013**
Staff and Intervenor Rebuttal Testimony to Each Other	Feb. 25, 2013	**March 11, 2013**
ATXI Rebuttal Testimony	March 4, 2013	**March 14, 2013**
Written Pre-hearing Motions	March 8, 2013	**March 19, 2013**
Motion Hearing	March 14, 2013 (9:30 AM)	**March 22, 2013**
Evidentiary Hearings	March 19-22, 2013 (10:00 AM on March 19)	**March 26-29**
Simultaneous Initial Briefs	April 5, 2013	**April 12, 2013**
Simultaneous Reply Briefs	April 12, 2013	**April 19, 2013**
Optional Suggested Conclusions for use in the Proposed Order (Position Summaries Unneeded)	April 12, 2013	**April 19, 2013**

Proposed Order (tentative date)	May 3, 2013	**May 10, 2013**
Simultaneous Briefs on Exceptions (tentative date)	May 17, 2013	
Last Scheduled Commission Meeting	June 18, 2013	
Deadline for Commission action	June 20, 2013	

WHEREFORE, for the reasons above and in ATXI's Motion, ATXI requests the Motion be granted.

Dated: January 15, 2013

Respectfully submitted,

Ameren Transmission Company of Illinois

/s/ Albert D. Sturtevant

One of their Attorneys

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CERTIFICATE OF SERVICE

I, Albert D. Sturtevant, an attorney, certify that on January 15, 2013, I caused a copy of the foregoing *Ameren Transmission Company of Illinois' Reply in Support of Motion for Leave to File Amended Landowner List* to be served by electronic mail to the individuals on the Commission's Service List for Docket 12-0598.

/s/ Albert D. Sturtevant
Attorney for Ameren Transmission
Company of Illinois

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AMEREN TRANSMISSION COMPANY OF ILLINOIS Petition for a Certificate of Public Convenience and Necessity, pursuant to Section 8-406.1 of the Illinois Public Utilities Act, and an Order pursuant to Section 8-503 of the Public Utilities Act, to Construct, Operate and Maintain a New High Voltage Electric Service Line and Related Facilities in the Counties of Adams, Brown, Cass, Champaign, Christian, Clark, Coles, Edgar, Fulton, Macon, Montgomery, Morgan, Moultrie, Pike, Sangamon, Schuyler, Scott and Shelby, Illinois.	)	Docket No. 12-0598

AFFIDAVIT OF DONELL MURPHY

STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

Donell Murphy, first duly sworn upon oath, deposes and states as follows:

1. My name is Donell Murphy. I am a Partner with Environmental Resources Management (ERM), located at 1701 Golf Road, Suite 1-1000, Rolling Meadows, Illinois.
2. ERM assisted ATXI with conducting public meetings to receive public comment concerning the Project in each county where the Project is to be located.
3. I have reviewed the document identified as Appendix A to ATXI's January 7, 2013 Motion for Leave to File Amended Landowner List and Order Directing the Clerk to Issue Notice on Certain Affected

Landowners that was filed on e-Docket on January 7, 2013. I am familiar with the content of this document.

4. Based on my review of Appendix A, public meeting sign-in sheets, and other pertinent information, I have concluded that at least seven (7) of the landowners listed on Appendix A attended a public meeting conducted by ERM and ATXI.

I hereby swear and affirm that the information contained in this Affidavit is true and accurate to the best of my knowledge, information and belief.

Donell Murphy

SUBSCRIBED AND SWORN before me this 14th day of January, 2013.

NOTARY PUBLIC

OFFICIAL SEAL
NADIA ALI
Notary Public - State of Illinois
My Commission Expires May 9, 2015